



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2016

Ms. Marie N. Rovira
Counsel for the Town of Addison
Messer Rockefeller Fort
6531 Preston Road, Suite 350
Frisco, Texas 75034

OR2016-07233

Dear Ms. Rovira:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 603960 (Ref. No. W003978-010716).

The Town of Addison (the "town"), which you represent, received a request for a specified offense report. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim.

Initially, we must address the town's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed

¹Although you raise section 552.003 of the Government Code, this is not an exception to disclosure under the Act. *See* Gov't Code § 552.003 (providing the term "governmental body" for purposes of the Act includes several enumerated kinds of entities and "the part, section, or portion of an organization, corporation, commission, committee, institutions, or agency that spends or that is supposed in whole or in part by public funds[.]"). As you provide no arguments as to why the requested information is not subject to the Act, we do not address your argument under section 552.003.

statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1). You state the town received the request for information on January 7, 2016. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exception applies, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the town failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the town has failed to comply with the requirements of the Act, the town has waived section 552.108 and may not withhold the requested information on that basis. Moreover, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released to the requestor pursuant to section 552.302 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 603960

c: Requestor